

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re: ) Chapter 7  
MICHAEL KIDWELL, ) Bankruptcy No. 18-12360  
Debtor(s). ) TRUSTEE’S REPLY TO OPPOSITION  
TO TRUSTEE’S MOTION FOR SALE  
OF REAL PROPERTY

COMES NOW the duly appointed trustee, Nancy James, through counsel, The Livesey Law Firm, and Rory C. Livesey, and files this reply to the Opposition to Trustee’s Motion for Sale of Real Property filed by Caliber Home Loans, Inc., servicer for U.S. Bank Trust N.A., as Trustee for LSF9 Master Participation Trust (“USB”) regarding the real property located at 24514 - 148<sup>th</sup> Lane S.E., Kent, Washington 98042.

The proposed sale price is \$376,000. USB had not objected to the proposed sale price. The sale will be free and clear of liens and encumbrances, with the liens and encumbrances to attach to the proceeds.

USB is ostensibly secured in the property. The amount it is owed on its purported claim exceeds the purchase price. The trustee proposes to sell the property pursuant to Section 363(f)(4). That subsection allows the trustee to sell property of the estate free and clear of an interest if that interest is subject to a *bona fide* dispute.<sup>1</sup> Litigation with the putative deed of trust holders is inevitable in this case. The trustee believes that it makes practical sense for the parties to be

<sup>1</sup>On November 7, 2018, the debtor filed amended schedules (Docket No. 56) listing CitiMortgage with a second possible encumbrance. That encumbrance suffers from the same infirmities as the USB claim. CitiMortgage has not responded to the motion.

1 litigating over money as opposed to real property that is currently unoccupied and likely uninsured  
2 (other than likely forced place insurance by the lender).

3 USB asserts that the trustee has not raised a *bona fide* dispute with regards to its  
4 encumbrance. It is overlooking its own motion to lift the automatic stay (Docket No. 48). The  
5 trustee filed a response to that motion (Docket Nos. 53 and 54). In that response the trustee lays out  
6 very clearly the theory under which she believes that the deeds of trust are no longer enforceable.  
7 USB's motion was originally scheduled to be heard on November 11, 2018. At the request of USB's  
8 counsel, the trustee agreed to a continuance of the motion to November 30, 2018, so USB could look  
9 at the issue. The continued hearing was not confirmed and no one appeared on behalf of USB. *See,*  
10 *generally*, docket. Additional attempts to contact USB's counsel also went without a response. The  
11 trustee has submitted sufficient evidence into the court file to demonstrate that the USB deed of trust  
12 is subject to a *bona fide* dispute.

13 WHEREFORE, the trustee requests that the objection be overruled and the sale be approved  
14 by the court.

15 RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of March, 2019.

16 THE LIVESEY LAW FIRM

17 /S/ Rory C. Livesey

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19 Rory C. Livesey, WSBA #17601  
20 Attorney for Trustee  
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